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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF OREGON**

**MEDFORD DIVISION**

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|---|---|
| **SUNWORKS UNITED, INC., a California Corporation,**<br><br>**Plaintiff,**<br><br>**vs.**<br><br>**CAMERON JAMES KIRKLAND,**<br><br>**Defendant.** | Case No.<br><br>**COMPLAINT**<br><br>(Trademark Infringement, Trademark Dilution – 15 USC §1114 and 15 §USC 1125) |

For its Complaint, Plaintiff alleges:

**JURISTICTION AND VENUE**

1.

This Court has Jurisdiction in this matter pursuant to 28 U.S.C. §1338 and 15 USC §2102.

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2.

Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that a substantial part of the events giving rise to the claims occurred within this Court's jurisdiction.

3.

At all relevant times described herein, Plaintiff has been engaged in business within the State of Oregon; Defendant is a resident of Josephine County, Oregon.

**THE PARTIES**

4.

Plaintiff, Sunworks United, Inc. is a California Corporation and is lawfully registered to do business in Oregon.

5.

Defendant is a resident of Josephine County, Oregon. Defendant has registered "Sunworks" as his assumed business name in Jackson County, Oregon.

6.

**FIRST CLAIM FOR RELIEF**

(Trademark Infringement – 15 USC §1114)

**7.**

Plaintiff is engaged in the business of commercial and residential solar energy installation and maintenance. Plaintiff is the registrant and owner the service mark "Sunworks" – Registry Number 5,162,777. Plaintiff has used that mark in commerce with respect to installation, maintenance and repair of solar energy systems since December of 2010. Plaintiff's products and services have come to be associated with the

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mark. As a registrant of the mark, Plaintiff has the exclusive right to use said mark in commerce as provided in 15 USC §1115.

8.

Since 2006, Plaintiff has been expanding its business throughout the United States. Plaintiff has always considered Northern California and Southern Oregon to be potential markets for their products. Plaintiff has recently become more active in these markets and expanded significant resources developing its brand in these markets.

9.

Since May of 2011, Defendant has registered the name “Sunworks” as his assumed business name in Jackson County, Oregon. Defendant has also developed a website using the name “Sunworks”, is licensed with the Oregon Construction Contractor’s Board as “Sunworks”, and conducts his business under the name “Sunworks”. Defendant is in the same business as Plaintiff. Defendant’s use of the term “Sunworks” is a clear reproduction of the referenced mark owned by Plaintiff.

10.

Plaintiff has not and does not consent to Defendant’s use in commerce of the term “Sunworks”. Plaintiff has requested that Defendant cease using the term “Sunworks” in his business activities. Defendant has refused to do so.

11.

Defendant’s use of the term “Sunworks” in commerce has caused actual confusion and/or mistake in the marketplace regarding the nature, origin and ownership of the registered service mark and the products affiliated with the registered mark.

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12.

Per 15 USC §1114 and 15 USC §1116, Plaintiff is entitled to relief enjoining Defendant from use of the term "Sunworks" in commerce, including, an order from this Court requiring Defendant to terminate registration of the term "Sunworks" as his assumed business name, an order from this Court directing Defendant to remove the term "Sunworks" from all advertising, an order from this Court directing Defendant to cancel his remove the term "Sunworks" from his CCB license, and an order from this Court directing Defendant to file reports with the Court detailing his compliance with any granted injunctive relief.

**SECOND CLAIM FOR RELIEF**

(Dilution – 15 USC §1125)

13.

Plaintiff re-alleges paragraphs 1 through 11.

14.

Plaintiff's registered mark as set forth in paragraph 7 herein is a famous mark as defined in 15 USC §1125 (b)(2). Said mark has been used by Plaintiffs since 2010 throughout the United States, and is associated by the consuming public with the products and services provided by Plaintiff. Plaintiff has conducted approximately $85,000,000.00, doing business with the registered mark. Plaintiff has exclusively used the registered mark throughout the United States such that the mark is commonly recognized as being associated with the products offered by Plaintiff.

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15.

In 2011, Defendant began using the term "Sunworks" in association with his business of solar panel installation and maintenance in the Southern Oregon Counties of Jackson and Josephine. These markets are within Plaintiff's anticipated market and part of Plaintiff's long standing plan for market expansion. Plaintiff began introducing its mark and products in these Counties in 2013.

16.

The term "Sunworks" which is being used by Defendant to advertise and promote his business is virtually identical to the registered mark owned by Plaintiff. Defendant's use of the mark caused actual confusion regarding the ownership of the marks and their affiliated businesses to such extent that consumers have assumed and come to believe that Defendant is an affiliate, employee or representative of Plaintiff. This assumed affiliation has and continues to damage Plaintiff's reputation.

17.

Per 15 USC §1125(c)(1), Plaintiff is entitled to injunctive relief prohibiting Defendant from any further use in any capacity of the term "Sunworks" in commerce.

WHEREFORE, Plaintiff prays for a Judgment and Order from this Court declaring that Plaintiff's registered marks "Sunworks" and " Sunworks Inc." are famous marks as defined in 15 USC §(c)(2), that said marks are entitled to the protection of this Court, that Defendant be enjoined from any use of the word "Sunworks" in his business activities, that Defendant terminate all business registrations utilizing the term

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"Sunworks", that Defendant remove the term "Sunworks" from his website and other advertising media, that the Court retain jurisdiction until such time as Defendant complies with all orders of this Court, for Plaintiff's reasonable costs and disbursements, and for such other relief this Court deems just and equitable.

DATED this 24th day of May, 2017.

By:/s/ *Richard Billin*
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